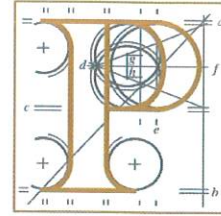


**Our Case Number:** ABP-314952-22

**Planning Authority Reference Number:** R74022



**An  
Bord  
Pleanála**

Development Management  
Community, Culture and Placemaking (FAO Kate Magner)  
Cork City Council  
City Hall, Anglesea Street  
Cork City  
Co. Cork

**Date:** 27 SEP 2023

**Re:** Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee garage, Model Farm Road is or is not development or is or is not exempted development  
Model Farm Road, Cork, T12 T326

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2022. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website ([www.pleanala.ie](http://www.pleanala.ie)). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

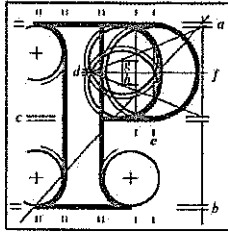
Miriam Baxter  
Executive Officer

RL100n



Tel	Tel	(01) 858 8100
Glaio Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	<a href="http://www.pleanala.ie">www.pleanala.ie</a>
Ríomhphost	Email	<a href="mailto:bord@pleanala.ie">bord@pleanala.ie</a>

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902



**An  
Bord  
Pleanála**

**Board Order  
ABP-314952-22**

---

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Cork City Council**

**Planning Register Reference Number: R740/22**

---

**WHEREAS** a question has arisen as to whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development:

**AND WHEREAS** Lee Garage Cork Limited (trading as Lee Auto Centre) care of John Spain and Associates of 39 Fitzwilliam Place, Dublin requested a declaration on this question from Cork City Council:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cork City Council on the 27th day of October, 2022:

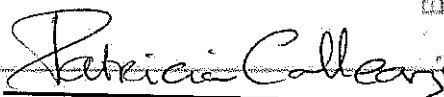
**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Part 1 of Schedule 2 of those Regulations,
- (d) the planning history of the site,
- (e) the pattern of development in the area,
- (f) the access arrangements to and within the site,
- (g) the submissions on file, and
- (h) the Inspector's report:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) the proposed change of use pertaining to the car sales showroom would generally come within the scope of the exemption provided in Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of those Regulations:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is development and is exempted development:



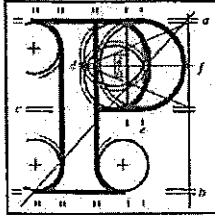


**Patricia Calleary**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

Dated this *26* day of *September* 2023.



An  
Bord  
Pleanála

**Board Direction**  
**ABP-314952-22**

---

The submissions on this file and the Inspector's report were considered at a Board meeting held on 20/09/2023.

The Board decided, as set out in the following Order, that

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**WHEREAS** a question has arisen as to whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development,

**AND WHEREAS** Lee Garage Cork Limited care of John Spain and Associates of 39 Fitzwilliam Place, Dublin requested a declaration on this question from Cork City Council,

---

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cork City Council on the 27<sup>th</sup> day of October, 2022,

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended,

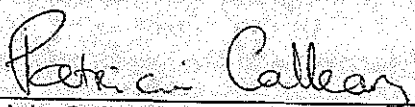
- (c) Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area,
- (f) access arrangements to and within the site,
- (g) the submissions on file, and
- (h) the Inspector's report,

**AND WHEREAS** An Bord Pleanála has concluded that:

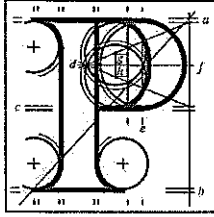
- (a) the proposed change of use pertaining to the car sales showroom would generally come within the scope of the exemption provided in Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations 2001, as amended,

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the Planning and Development Act 2000, as amended, hereby decides that the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is development and is exempted development.

**Board Member:**

  
Patricia Calleary

**Date:** 20/09/2023



An  
Bord  
Pleanála

## Inspector's Report ABP 314952-22

---

### Question

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop is or is not development or is or is not exempted development.

### Location

Lee Garage, Model Farm Road, Cork

### Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

R74022

Applicant for Declaration

Lee Garage Cork Ltd.

### Referral

Referred by

Cork City Council

Owner/Occupier

Lee Garage Cork Ltd.

Observer(s)

None

Date of Site Inspection

01/11/22

Inspector

Pauline Fitzpatrick

## 1.0 Introduction

Cork City Council made a submission to the Board under section 5 of the Planning and Development Act, 2000, as amended, seeking a declaration as to whether a proposed change of use from an existing car sales showroom to a shop at Lees Garage Model Farm Road is or is not development and is or is not exempted development. The submission was received on the 27<sup>th</sup> October, 2022.

The Board is advised that there is a concurrent appeal before it for demolition of existing shop and change of use of part of the existing showroom to a new shop. File ref. ABP 313906-22. It entails a 1<sup>st</sup> party against condition 2 attached to the planning authority's notification of decision to grant permission.

## 2.0 Site Location and Description

The site subject of the referral is to the south of Model Farm Road (R608) in the south-western Cork City suburb of Bishopstown. It comprises an existing filling station with small ancillary shop with the forecourt covered by a canopy. The large building to the rear of the forecourt area has a car sales showroom with a stated floor area of 502 sq.m. with the southern part of the building used as a garage/car service area. There is parking to the side and rear. The site is served by two accesses.

The immediate vicinity is characterised by residential uses.

## 3.0 The Question

The question referred to the Board is:-

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

## 4.0 The Referrer's Submission

The referral pertains to the northern part of the larger building to the rear of the filling station forecourt which is used for the sale and display of motor cars and has a floor area of 502 sq.m. It does not include the service garage to the rear.



Details submitted with the referral include a summary of the planning history on the site, including copies of the relevant permissions, and a copy of the submission forming an application to Cork City Council from John Spain and Associates on behalf of the referrer Lee Garage Cork Ltd.

The submission from John Spain and Associates can be summarised as follows:

- The subject area comprises a car sales showroom and has been/is used for the display and sale of motor vehicles for in excess of 40 years.
- It is considered that the change of use is exempted development under class 14 (a) of the Planning and Development Regulations 2001, as amended, which allows for change of use from sale or leasing or display for sale or leasing of motor vehicles to use as a shop. Section 4(3) of the Planning and Development Act, 2000, as amended, is also applicable. No works are proposed at present.
- The provisions of article 9 of the Regulations which precludes exempted development under article 6 are not applicable to the proposed change of use in that:
  - It does not contravene any condition attached to a permission for a shop.
  - It will not give rise to any issues in respect of traffic safety when compared with the long established use.
  - There is sufficient parking on site which has served and will continue to serve the commercial premises.
- With respect to the application for change of use under ref. 21/40518 the Council's Transportation Department Traffic: Regulation and Safety Report had no objection.
- No grant of permission has been issued with respect to application ref. 21/40518 as it is currently the subject of an appeal.
- Article 10 of the Regulations which relates to exemptions for change of use within any of the classes specified in Part 4 of Schedule 2 does not apply as the exemption seeking to be availed of is under Part 1 of Schedule 2.

- Precedent has been set. File reference ABP 304204-19 cited.

#### 4.1. **Response by Lee Garage Cork Ltd.**

The submission from John Spain and Associates refers. In addition to reiterating points made in its original referral to the City Council summarised above I note the following:

The established car showroom use was permitted under reg ref. 79/8278.

#### 5.0 **Planning History**

ABP 313906-22 – current 1<sup>st</sup> party appeal against condition 2 attached to the planning authority's decision to grant permission for demolition of existing shop and change of use of part of the existing showroom to shop.

Condition 2(a) requires that the net retail sales space including any retail, delicatessen, seating area and off licence not exceed 100 sq.m.

#### 6.0 **Previous Referral Decisions**

**ABP 304204-18:** The Board decided that the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan is development and is exempted development

**09.RL.3486:** The Board decided that the proposed change of use of a former car sales premises to use as a shop at Gallowshill, Athy, County Kildare is development and is not exempted development. In its decision the Board noted that the existing premises on site was not carried out in the first instance in accordance with the drawings and documentation submitted to the planning authority and therefore contravened a condition attached to the permission and the exemption that would generally be available under Class 14 (a) could not be considered exempt by reference to Article 9(1) of the Regulations.

**06F.RL.3539:** The Board decided that the change of use from a garage and showrooms to use as a shop at The Fairgreen, Westport, Co. Mayo is development and is exempted development.

**88.RL.2959:** The Board decided that the use of car showroom for retail/shop use at Nyhan Motors, The Bypass, Cloghmacsimon, Bandon, Co. Cork is development and is not exempted development. In its decision the Board considered that the change of use would contravene a specific condition (Condition No.4) attached to the applicable grant of permission, requiring that no change of use would occur in respect of the permitted development without a grant of permission.

**83.RL.2856:** The Board decided that the proposed change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles to use as a shop, Capital Cars, Church Road, Tullamore is development and is exempted development.

**28S.RL.2020:** The Board decided that the change of use from motor/warehouse showrooms to a shop for the sale of tiles. Units 1 and 1C Concord Industrial Estate, Naas Road, Dublin 12 is development and is exempted development.

## **7.0 Policy Context**

### **7.1. Development Plan**

Cork City Development Plan, 2022

The site is within an area zoned ZO 01 – Sustainable Residential Neighbourhoods, the objective for which is to protect and provide for residential uses and amenities, local serviced and community, institutional, educational and civic uses.

### **7.2. Natural Heritage Designations**

None in the vicinity.

## **8.0 Statutory Provisions**

### **8.1. Planning and Development Act, 2000**

Planning and Development Act, 2000, as amended

- Section 3 – Development.
- Section 4 – Exempted development, in particular sub-section (2).

- Section 5 – Declaration and referral on development and exempted development, in particular sub-section (4).

## 8.2. Planning and Development Regulations, 2001

- Part 2. Exempted development. Article 5(1)  
'Shop' is defined as a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public '(a) for the retail sale of goods..(f) for the display of goods for sale'.
- Article 6 – Exempted Development, in particular sub-section (1) and Class 14(a) of Schedule 2, Part 1 (Change of use).
- Article 9 – Restrictions on exemption, in particular sub-section (1)(i), (iii) and (viii).

## 9.0 Assessment

- 9.1.1. It is noted at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the change of use of part of the car salesroom to use as a shop but rather whether or not the matter in question constitutes development, and if so whether it falls within the scope of exempted development.
- 9.1.2. The Board is advised that there is a current 1<sup>st</sup> Party appeal before it under ref. ABP 313906-22 against condition 2 attached to the planning authority's decision to grant permission for demolition of existing shop and change of use of part of the existing showroom to shop. Condition 2(a) requires that the net retail sales space including any retail, delicatessen, seating area and off licence not exceed 100 sq.m.

## 9.2. Is or is not development

- 9.2.1. The site as currently configured provides for a fuel filling station to the front served by a small ancillary retail unit with the large unit behind same used as a car sales showroom and garage. As per the details provided by the referrer the site has been used for such purposes for over 40 years with permission secured for the car sales showroom under PA ref. 79/8278 details of which are provided in support.

9.2.2. Article 5(1) of the Planning and Development Regulations, 2001, (as amended), defines the term 'shop' as use of a structure for the retail sale of goods and for the display of goods, where the sale, display or service is to visiting members of the public. Uses referred to include post office, travel agency, food and wine for consumption off premises, hair dressing, laundrette etc. No reference is made to the use for sale or display of motor vehicles. In addition a car showroom and a shop as so defined have different attributes e.g. in terms of vehicle trips generated and patterns of use. I submit that the change of use from car showroom to retail convenience store is a material change of use and therefore comprises development under section 3(1) of the Act.

### 9.3. Is or is not exempted development

9.3.1. Article 6(1) provides that subject to Article 9 development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations specified in column 2. Class 14 of Part 1, Schedule 2 provides that development consisting of a change in use from the display or sale of motor vehicles to use as a shop is exempted development. No conditions or limitations are set out in column 2 of the Class (in respect of this change of use). I consider that the proposal subject of this referral falls within this class.

### 9.4. Restrictions on exempted development

9.4.1. Article 9 sets out a number of instances under which development in Part 1 is not exempted development. In terms of the subject referral I note the following:

1. The proposal would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. As noted previously there is a current appeal against a condition attached to a permission to change the use of part of the showroom to a shop but, as yet, no decision has been made.
2. The site is served by two accesses from Model Farm Road with good sightlines from both. The 50kph speed limit applies. Off street parking for over 25 vehicles is available within the curtilage of the site. Whilst a shop would have different traffic movements to the car sales showroom I consider

that the change of use would not give rise to material concerns in terms of conflicting vehicular movements or congestion as to constitute a traffic hazard. The referrer, in support of its case, makes reference to the report from Traffic: Regulation and Safety on the concurrent appeal under ref. ABP 313906-22 for the change of use of part of the showroom to a shop in which no objection was raised.

3. As noted previously the section of the building to which the referral pertains is currently used as a car sales showroom for which permission was secured. Therefore the proposal would not consist of or comprise the extension, alteration, repair, renewal of an unauthorised structure or a structure the use of which is unauthorised.

9.4.2. On this basis I consider that the proposed change of use is exempted development.

#### 9.5. **Environmental Impact Assessment and Appropriate Assessment**

- 9.5.1. Section 4(4) of the Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Having regard to the nature and scale of the works, I am satisfied that the development would not give rise to any significant environmental effects and would not therefore require Environmental Impact Assessment. I am equally satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cork City Council on the 27<sup>th</sup> day of October, 2022

---

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site,
- (e) The pattern of development in the area,
- (f) Access arrangements to and within the site,
- (g) The submissions on file, and
- (h) The Inspector's report:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the proposed change of use pertaining to the car sales showroom would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended, and
- (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations, 2001, as amended:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the Planning and Development 2000 Act, as amended, hereby decides that the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is development and is exempted development.

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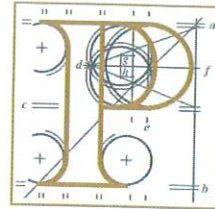
**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**February, 2023**



**Our Case Number:** ABP-314952-22

**Planning Authority Reference Number:** R74022



An  
Bord  
Pleanála

Development Management  
Community, Culture and Placemaking (FAO Kate Wagner)  
Cork City Council  
City Hall, Anglesea Street  
Cork City  
Co. Cork

**Date:** 19 May 2023

**Re:** Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee garage, Model Farm Road is or is not development or is or is not exempted development  
Model Farm Road, Cork, T12 T326

Dear Sir / Madam,

I have been asked by the Board to refer to the above-mentioned case and in particular, to the Board's notice to you under section 126 of the Planning and Development Act 2000, in which it was indicated that the Board intended to determine this case before **18th May 2023**.

I regret to inform you that, the Board will not now be in a position to determine the case before that date.

There has been a significant turnover of personnel at board level in the organisation over recent months which has resulted in severely restrained capacity at board level and a consequent backlog of cases for determination. The replacement of board members and recruitment of additional overall staff resources is progressing and will provide the necessary capacity to address current delays in determining cases.

This case will be determined as soon as practicable.

The delay in determining the case is regretted.

Yours faithfully,

Rory Kellely  
Executive Officer  
Direct Line: 01-8737163



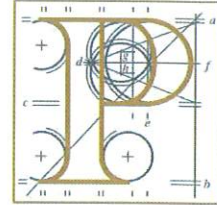
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<b>Teil</b>	<b>Tel</b>	(01) 858 8100
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<b>Facs</b>	<b>Fax</b>	(01) 872 2684
<b>Láithreán Gréasáin</b>	<b>Website</b>	www.pleanala.ie
<b>Ríomhphost</b>	<b>Email</b>	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
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**Our Case Number:** ABP-314952-22

**Planning Authority Reference Number:** R74022



**An  
Bord  
Pleanála**

Cork City Council  
City Hall  
Anglesea Street  
Cork City  
Co. Cork  
T12 T997

**Date:** 19 May 2023

**Re:** Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee garage, Model Farm Road is or is not development or is or is not exempted development  
Model Farm Road, Cork, T12 T326

Dear Sir / Madam,

I have been asked by the Board to refer to the above-mentioned case and in particular, to the Board's notice to you under section 126 of the Planning and Development Act 2000, in which it was indicated that the Board intended to determine this case before **18th May 2023**.

I regret to inform you that, the Board will not now be in a position to determine the case before that date.

There has been a significant turnover of personnel at board level in the organisation over recent months which has resulted in severely restrained capacity at board level and a consequent backlog of cases for determination. The replacement of board members and recruitment of additional overall staff resources is progressing and will provide the necessary capacity to address current delays in determining cases.

This case will be determined as soon as practicable.

The delay in determining the case is regretted.

Yours faithfully,

Rory Kelledy  
Executive Officer  
Direct Line: 01-8737163



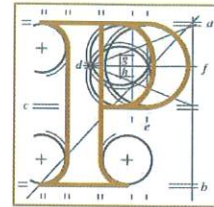
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Our Case Number: ABP-314952-22

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An  
Bord  
Pleanála

Development Management  
Community, Culture and Placemaking (FAO Kate Magner)  
Cork City Council  
City Hall, Anglesea Street  
Cork City  
Co. Cork



Date: 10 March 2023

Re: Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee garage, Model Farm Road is or is not development or is or is not exempted development  
Model Farm Road, Cork, T12 T326

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above mentioned referral.

In accordance with section 126(2)(a) of the Planning and Development Act, 2000, (as amended), it is a statutory objective of the Board to ensure that every referral received is determined within 18 weeks beginning on the date of receipt of the referral. Where it appears to the Board that it would not be possible or appropriate to determine a referral within this period, a notice must be sent to the parties to the referral in accordance with section 126(3)(a) of the 2000 Act, (as amended).

The Board hereby serves notice under section 126(3)(a) that it will not be possible to determine the case within the statutory objective period due to a backlog of cases.

The Board now intends to determine the above referral before **3rd June 2023**. The Board will take all such steps as are open to it to ensure that the referral is determined before that date.

Yours faithfully,

Rory Kelleed  
Executive Officer  
Direct Line: 01-8737163

BPRL90 Registered Post

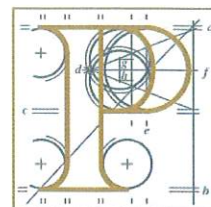
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D01 V902 D01 V902



**Our Case Number:** ABP-314952-22

**Planning Authority Reference Number:** R74022



**An  
Bord  
Pleanála**

Development Management  
Community, Culture and Placemaking (FAO Kate Magner)  
Cork City Council  
City Hall  
Cork  
Co. Cork



**Date:** 28 October 2022

**Re:** Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee garage, Model Farm Road is or is not development or is or is not exempted development  
Model Farm Road, Cork, T12 T326

Dear Sir / Madam,

An Bord Pleanála has received your referral and will consider it under the Planning and Development Act, 2000, (as amended). A receipt for the fee lodged is enclosed.

In order to comply with section 128 of the Planning and Development Act, 2000, (as amended), please forward, within a period of 2 weeks beginning on the date of this letter, copies of any information in your possession which is relevant to the referral, **other than the documents already submitted**, including:

- (i) details of previous decisions affecting the site;
- (ii) any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act, (as amended), and the planning authority;
- (iii) the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- (iv) the names and addresses of all persons notified by you under subsection (2) of section 5 of the 2000 Act, (as amended);
- (v) where no declaration was issued by you, indicate the date that the declaration was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act, (as amended).

Please note that under section 127(3) of the Planning and Development Act, 2000, (as amended), the person by whom the referral is made shall not be entitled to elaborate in writing upon or make further submissions in writing in relation to the grounds of the referral unless requested to do so by An Bord Pleanála.

<b>Teil</b>	<b>Tel</b>	(01) 858 8100
<b>Glaio Áitiúil</b>	<b>LoCall</b>	1890 275 175
<b>Facs</b>	<b>Fax</b>	(01) 872 2684
<b>Láithreán Gréasáin</b>	<b>Website</b>	www.pleanala.ie
<b>Ríomhphost</b>	<b>Email</b>	bord@pleanala.ie

64 Sráid Maoilbhríde Baile Átha Cliath 1 D01 V902	64 Marlborough Street Dublin 1 D01 V902
---	---

Yours faithfully,



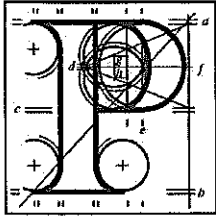
Alice-Faye Staunton  
Administrative Assistant  
Direct Line:

BPRL01PA

**Teil**  
**Glaio Áitiúil**  
**Facs**  
**Láithreán Gréasáin**  
**Riomhphost**

**Tel** (01) 858 8100  
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**Fax** (01) 872 2684  
**Website** [www.pleanala.ie](http://www.pleanala.ie)  
**Email** [bord@pleanala.ie](mailto:bord@pleanala.ie)

64 Sráid Maoilbhríde 64 Marlborough Street  
Baile Átha Cliath 1 Dublin 1  
D01 V902 D01 V902



An  
Bord  
Pleanála

Táille Reachtúil  
Statutory Receipt

<b>Ainm an Chustaiméara:</b> <b>Name of Customer:</b>	Development Management
<b>Gníomhaire:</b> <b>Agent:</b>	
<b>Íocaíocht Faighte:</b> <b>Payment Received:</b>	€110
<b>Modh Íocaíochta:</b> <b>Payment Method:</b>	Cheque
<b>Uimh. Aitheantais Lóisteála:</b> <b>Lodgement ID:</b>	LDG-058558-22
<b>Cineál na Lóisteála:</b> <b>Lodgement Type:</b>	Referral
<b>Iarratas ar éisteacht ó bhéal</b> <b>Oral Hearing Request:</b>	No
<b>Dáta Faighte:</b> <b>Date Received:</b>	27/10/2022
<b>Faighte ag:</b> <b>Received by:</b>	Gillian Brogan

Teil  
Glaó Áitiúil  
Facs  
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64 Sráid Maoilbhríde  
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D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902



# Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1, D01V902

21/10/2022

**RE: Section 5 Declaration R740/22 Lee Garage, Model Farm Road,  
Cork**

Dear Sir/Madam,

Please find enclosed a referral under Section 5 (4) of the Development & Planning Act 2000 with a cheque for the referral fee of €110.00. On the remittance advice, 'Your Reference' is "SECTION 5 DECL. R470/22". Please disregard this error. The correct file reference number is R740/22.

### **Question Referred**

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

### **Applicant Details**

Lee Garage Cork Ltd. T/A Lee Auto Centre,  
Lee Garage,  
Model Farm Road  
Cork T12 T326.

### **Person/Agent acting on behalf of the Applicant**

John Spain/Yvonne McMahon,  
John Spain Associates,  
39 Fitzwilliam Place,  
Dublin 2, D02 ND61.

Copies of the following documents are included in the appendices of this referral:


- Referral under Section 5(4) of the Planning and Development Act 2000
- Section 5 Declaration application, R740/22
- Planning Permission, TP 8278, notification of decision to grant planning permission with conditions, site layout map, elevations & floor plans
- Planning Permission 21/40518, notification of decision to grant planning permission with conditions



**We are Cork.**

Should additional information be required, please contact me directly on [REDACTED] or [REDACTED]

Yours faithfully,



---

**Kate Magner**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**



The Secretary  
An Bord Pleanála  
64 Marlborough Street  
DUBLIN 1  
D01 V902

12 October 2022

**Referral under Section 5(4) of the Planning and Development Act 2000**  
**Site at: Lee Garage, Model Farm Road, Cork**  
**Cork City Council Ref: R740.22**

This referral is made under section 5(4) of the Planning and Development Act 2000 (as amended).

This referral is structured as follows:

1. Introduction
2. Background
3. Referral
4. Screening for Appropriate Assessment
5. Conclusion

Appendices 1 – 4

## **1. Introduction**

### **1.1 Relevant Legislative Provision**

All relevant legislative provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) are included as **Appendix 1** to this referral. In this referral, 'the Act' means the Planning and Development Act 2000, as amended, and 'the Regulations' means the Planning and Development Regulations 2001, as amended.

### **1.2 Particulars of Referral**

Various particulars required under Section 127 of the Act are provided with this referral. The subject matter and grounds of the referral and the reasons, considerations and arguments on which they are based are included below in the body of this referral. Also enclosed is the fee of €110.

The referral is made by:

Development Management, Planning Department  
Community, Culture and Placemaking Directorate,  
Cork City Council, City Hall, Cork  
Telephone: 021-492-4029  
Email: [kate\\_magner@corkcity.ie](mailto:kate_magner@corkcity.ie)

### **1.3 The Question Referred**

As per the application received from John Spain Associates on behalf of Lee Garage Cork Ltd the question referred here is:

*Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.*

### **1.4 The Referral Site**

For ease of reference, the lands which are the subject of this referral are referred to as 'the referral site' in this referral.

The referral site is located at Model Farm Road, approx. 350m west of Dennehy's Cross in Cork City. The site is 0.64 ha, with 2 no vehicular entrances along the road frontage. On the site there is a motor fuel forecourt, hard surface area, small shop associated with the forecourt area with associated fuel pumps, parking and a small shop for the fuel pumps. To the rear of the of the shop there is a large building. The northern part of this building is used for the sale and display of motor cars, and it has a floor area of 502m<sup>2</sup>. It is this part of the building used for the sale and display of the motor car which is the subject matter of the referral. The southern part of this building is used as a workshop/car service.

A land ownership map and site layout map are attached as **Appendix 2** along with determination form and report/cover letter received.

## 2. Background

### 2.1 General Background

The subject referral to the Board is subsequent to a request for a Planning Authority declaration on the question as set out in Section 1.3 above. The request for declaration is recorded under Cork City Council Ref: R740/22.

The application and report/cover letter, received by Cork City Council on 15 September 2022 by John Spain & Associates on behalf of Lee Garage Cork Ltd, are attached hereto as **Appendix 2**.

### 2.2 Site Planning History

The planning permissions associated with the subject site as follows –

#### 2140518

Lee Garage Cork Ltd. Trading as Lee Auto Centre

*Permission for proposed development on site at Lee Garage, Model Farm Road, Cork. Proposed works: (1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car showroom to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m<sup>2</sup>) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works*

Outcome:

Notification of Decision to Grant with Conditions – 31.05.2022

Application Status:

Appealed. First party appeal against condition no 2, ABP ref: ABP-313906-22  
According to the ABP website, the case is due to be decided by 27.10.2022.

#### 1034500

Lee Garage

*Retention of alterations to extended forecourt canopy as granted under 09/36650*

Outcome: Grant conditional 06.10.2010

**0933660**

Lee Garage

*Construction of a) extension to existing canopy, b) addition of 2 new fuel dispensing pumps, c) installation of 2 additional under-ground fuel storage tanks, d) widening of existing entrance*

Outcome: Grant conditional 21.04.2009

**8211109**

Lee Garage Cork Limited

*Installation of LPC storage tanks and automatic dispenser*

Outcome: Grant conditional 31.03.1983

**798278**

Lee Garage (Cork) Ltd

*Erection of showroom, offices, service area and petrol forecourt*

Outcome: Grant conditional 01.07.1979

Copies of the Notification of Decision to Grant with conditions, site layout plan and elevations for the 798278 are attached in Appendix 3.

---

### **2.3 Development Plan Objectives**

#### **Cork City Development Plan 2022-2028**

The Cork City Development Plan 2022-2028 was made by the elected members of Cork City Council on 10 June 2022 and came into effect on 8 August 2022.

Under this plan, the subject site is zoned for sustainable residential use, ZO 01 (Map 08, Volume 2).

The objective is to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses, p 542-543.

The carparking requirements for a convenience retail in Zone 2 (city suburbs and areas accessible to mass transit (existing or proposed LRT, core bus network) is 1 space for 50m gross floor area, pp 522-526.

The site is not affected by any recorded monuments or protected structures.

The Core Strategy includes Neighbourhood Development Sites. These are locally important underutilised sites with capacity for mix used regeneration that deliver walkable neighbourhoods (p 47, p 303 and p 448).

This site is identified as a Neighbourhood Development Site No 9, p 453

#### **Objective 10.100 Neighbourhood Development Sites, p 449**

*Cork City Council in collaboration with landowners and relevant stakeholders will progress the neighbourhood development sites through active land management. These sites will benefit the local neighbourhood and support compact growth. Development proposals will address the relevant points highlighted by the text and icons associated with the maps and relevant objectives throughout this plan.*

### 3. Referral

The question referred is:

*Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.*

The application relates to the car sales showroom unit which has a floor area of 502m<sup>2</sup>. The unit is located to the rear of an existing motor fuel forecourt and shop. The application does not include the service garage behind the car sales area.

The referral from John Spain & Associates states that the applicant intends to operate the car sales showroom as a shop as per the plans, Figure 3.1, on page 6 of the report/cover letter.

There is a pending first party appeal on the site, ref 313906. The subject matter of the planning appeal is condition no 2 of the notification of the decision to grant planning permission ref, 2140518. The planning application sought permission for *change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station* and other works. The floor plan shown in Figure 3.1 was submitted with the first party appeal.

Under Section 5(4) of the Planning and Development Act 2000, as amended, the Planning Authority hereby refers this question to be decided by An Bord Pleanála.

### 4. Conclusion

The Planning Authority looks forward to An Bord Pleanála's consideration and determination of this referral.

Please do not hesitate to contact this office should any further information be required.

Encl.

#### Appendix 1 Legislative Provisions

**Appendix 2** Copy Section 5 Referral to the Planning Authority, received from John Spain & Associates on the 15.09.2022 (includes application form, report/cover letter from John Spain & Associates, site location map, site layout, floor plan, elevations (existing and proposed)).

---

#### Appendix 3 Copies of relevant planning permissions associated with the Referral Site

Fee € 110

## **Appendix 1 – Legislative Provisions**

### **PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED**

#### **Section 2(1)**

“exempted development” has the meaning specified in section 4.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

#### **Section 3(1)**

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

#### **Section 4(2)**

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

#### **Section 4(3)**

A reference in this Act to exempted development shall be construed as a reference to development which is—

any of the developments specified in subsection (1), or  
development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

#### **Section 4(4)**

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

#### **Section 5(1)**

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

#### **Section 5(4)**

Notwithstanding *subsection (1)*, a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

### **PLANNING AND DEVELOPMENT REGULATIONS, 2001 AS AMENDED**

#### **PART 2 EXEMPTED DEVELOPMENT**

##### **Article 5(1) Interpretation for this Part**

In this Part—

'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

#### Article 6(1) Exempted development

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

#### Article 9 Restrictions on exemption

This sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development –

- (a) if the carrying out of such development would—
  - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
  - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
  - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
  - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
  - (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

#### Article 10 Changes of Use

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—
- (i) as an amusement arcade,
  - (ii) as a motor service station,
  - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,
  - (iv) for a taxi or hackney business or for the hire of motor vehicles,
  - (v) as a scrap yard, or a yard for the breaking of motor vehicles,
  - (vi) for the storage or distribution of minerals,
  - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,
  - (viii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or
  - (ix) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.

CLASS 1 of Schedule 2 Part 4, Classes of Use, refers to Use as a shop.

(Article 6) Schedule 2, Part 1, Class 14  
Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
Change of use  <b>CLASS 14</b> Development consisting of a change of use— (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,.....	[NONE]



## Appendix 2 – Section 5 Referral R740/22

**Appendix 3 – Copies of relevant extracts from planning application files associated with the referral site**

**79/8278**

- Notification of decision to grant planning permission with conditions
- Site layout map dated 02.03.1979
- Elevations x 2 dated 02.03.1979
- Floor plans dated 02.03.1979

**21/40518**

- Notification of decision to grant planning permission with conditions dated 31.05.2022

**BARDAS CHORCAI — CORK CORPORATION**

**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 1963 to 1976**

**NOTIFICATION OF DECISION TO GRANT**

**OUTLINE PERMISSION / PERMISSION / APPROVAL**

**SUBJECT TO / WITHIN CONDITIONS UNDER SECTION 26 OF THE ACT OF 1963**

To : Ice Garage (Cork) Ltd., Reference No. in  
c/o "Rosaris", Planning Register T.P. 8278  
Parrailea Park,  
Model Farm Road, Cork. Application  
Received : 2nd March, 1979

In pursuance of the powers conferred upon them by the above-mentioned Act, the Cork Corporation have by order dated 1/5/79 decided to grant **OUTLINE PERMISSION / PERMISSION / APPROVAL** for the development of land, namely:— Erection of showroom, offices, service area and petrol forecourt at Model Farm Road, Cork.

Subject to the conditions set out in Column 1 of attached Schedule, the reasons for the imposition of such conditions are set out in Column 2 of said Schedule.

If there is no appeal against the said decision, a grant of **OUTLINE PERMISSION / PERMISSION / APPROVAL** in accordance with the decision will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanala (see footnote).

It should be noted that until a grant of **OUTLINE PERMISSION / PERMISSION / APPROVAL** has been issued the development in question is NOT AUTHORISED.

N.B.—This permission is subject to

14 No. condition(s)

Signed on behalf of the Corporation of Cork

Date :

1/5/79

*msd*

Staff Officer, Planning Department

NOTE 1 : An appeal against a decision of a planning authority under Section 26 of the Act of 1963 may be made to An Bord Pleanala. An appeal shall be made in writing and shall state the subject matter of the appeal and the grounds of the appeal. An appeal by the applicant for permission should be accompanied by this form. In the case of an appeal by any other person the name of the applicant, particulars of the proposed development and the date of the decision of the planning authority should be stated.

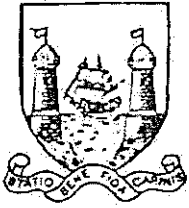
A deposit of £10 must accompany each appeal to An Bord Pleanala.

The applicant for permission may appeal within **one month** beginning on the day of receipt by him of the decision. Any other person may appeal within **three weeks** beginning on the date of the decision.

Appeals should be addressed to An Bord Pleanala, Holbrook House, Holles Street, Dublin 2.

NOTE 2: Grant of Permission under the Local Government (Planning & Development) Act, 1963, is not to be taken as a waiver of the provisions of any Building Bye-Law, Local Act, Order, Regulation or other Statutory Provision in force in the Cork County Borough. Approval under the Corporation's Bye-Laws should also be obtained in addition to the Planning Permission.

NOTE 3: Please ensure that the requirements of the Chief Fire Officer are complied with.



Please Address Reply to

ROOM NO.

# BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

TELEPHONE 021-56611  
21731

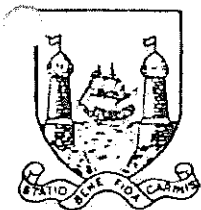
Schedule of conditions attached to  
the Planning Permission issued by  
Cork Corporation Ref. T.P. 8278

## Column 1 CONDITIONS

1. Prior to commencement of development the developer to make a contribution of £3404 to Cork Corporation towards the cost of drainage works facilitating the proposed development subject to:
  - a. Where the proposed works are not commenced within twenty years of completion of the development, the Planning Authority shall return the contribution;
  - b. Where the proposed works are, within the said period, carried out in part only or in such manner as to facilitate the development to a lesser extent, the Planning Authority shall return a proportionate part of the contribution;
  - c. The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.
2. All surface water must be disposed of on site and details of soakaways submitted for approval.
3. Petrol and oil traps with a minimum retention period of 15 mins. must be installed. Details of location of these traps must be submitted for approval.
4. Provision to be made for waste oil storage of minimum capacity 1500 litres.

## Column 2 REASONS FOR CONDITIONS

1. The Cork Drainage Works will facilitate the proposed development
2. In the interests of satisfactory drainage arrangements.
3. In the interests of preventing environmental pollution and satisfactory drainage arrangements.
4. In the interests of satisfactory drainage arrangements and in the interests of public health.



# BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

Please Address Reply to

ROOM NO.

TELEPHONE 021-56611  
21731

cont/

## Column 1. CONDITIONS'

5. Prior to commencement of development <sup>the developer</sup> ^  
to make a contribution of £390 to Cork Corporation towards the cost of water, works facilitating the proposed development subject to:

a. Where the proposed works are not commenced within twenty years of completion of the development, the Planning Authority shall return the contribution;

b. Where the proposed works are, within the said period, carried out in part only or in such manner as to facilitate the development to a lesser extent the Planning Authority shall return a proportionate part of the contribution;

c. The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.

6. A hydrant must be fixed on the public main at the entrance to the site at the applicant's expense.

7. Development shall not take place forward of the line AA endorsed on the submitted site layout map. Any land between the line AA and the existing road boundary line shall be ceded free of charge to Cork Corporation in lieu of a development charge for future road works.

8. Prior to the commencement of development on site the applicant shall submit a revised site layout map indicating to the satisfaction of the Planning Authority that clear sight visibility of sight triangle dimensions 60 m x 5.5 m has been provided at the entrances to the development site.

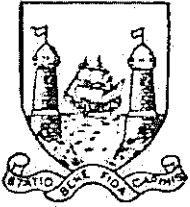
## Column 2 REASONS FOR CONDITIONS.

5. The Cork Water Works (Wilton Main) will facilitate the proposed development.

6. In the interests of satisfactory water arrangements.

7. Proposed new road works in the area will facilitate the development.

In the interests of providing satisfactory sightlines along the exits and entrances to the development and in the interests of pedestrian and vehicular safety.



Please Address Reply to  
ROOM NO.

# BARDAS CHORCAI

CORK CORPORATION

CITY HALL CORK

TELEPHONE 021-56611  
21731

cont

## Column 1 CONDITIONS

9. All alterations necess. to the public footpath shall be carried out by the C.E. RDS., Department of Cork Corporation at the applicant's expense.

X  
10. Prior to the commencement of development on site the applicant shall submit a revised site layout map indicating to the satisfaction of the Planning Authority that all development on site will be recessed at a minimum distance of 40' behind the road line endorsed AA on the existing site layout map. This 40' recession shall incorporate a planting strip of minimum depth 25 ft. with the remaining 15' being used for the purposes of on site vehicular circulation space.

11. Prior to the commencement of development on site and after discussion with the Local Planning Authority the applicant shall submit to the Local Planning Authority for their approval plans showing;

- i. A comprehensive scheme for the landscaping and planting of the development site;
- ii. Details of boundary wall treatment.

12. Details of dimensions and location of proposed name signs, advertising signs and site lighting shall be submitted to the Local Planning Authority for their approval prior to the commencement of on site development.

13. Any future on site development other than the 135000 sq. ft. which forms the subject of the current application must have the prior approval of the Local Planning Authority.

14. None of the conditions listed above must be considered prejudicial to the compliance of the applicant with condition No. 1. of T.P. 7324.

## Column 2 REASONS FOR CONDITIONS.

In order to provide a satisfactory standard of alteration to the public footpath.

10. In order to preserve the environmental amenities of a predominantly residential area.

11. In the interests of visual a amenity and to protect the amenities of adjoining residential propoerties.

12. In the interests of the amenities of the area.

13. In the interests of orderly on site development.

14. To ensure compliance with the condition No. 1. of Outline Permission T.P. 7324.

COMHAIRLE CATHRACH CHORCAÍ - CORK CITY COUNCIL

PLANNING AND DEVELOPMENT ACT 2000  
NOTIFICATION OF DECISION TO GRANT

Permission

SUBJECT TO CONDITIONS UNDER SECTION 34 OF THE ACT OF 2000

To: Lee Garage Cork Ltd. Trading as Lee Auto Centre  
c/o Camilla Botto Poala  
DL Group Consulting Engineers  
1 Hodders Villas Ballincollig  
Cork P31X525

Ref No.: 21/40518 Application Received:  
23/09/2021

In pursuance of the powers conferred upon them by the above mentioned Acts, Cork City Council have by order dated **31/05/2022** decided to GRANT **Permission** for the development of land, namely: Permission for proposed development on site at Lee Garage, Model Farm Road, Cork. Proposed works: (1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m<sup>2</sup>) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works. at : Lee Garage, Model Farm Road, Cork,

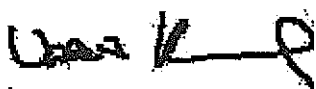
In accordance with plans and particulars submitted on 23/09/2021.

Subject to the (15 No.) conditions and reasons set out in the attached Schedule.

If there is no appeal against said decision, a grant of **Permission** in accordance with the decision, will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanála (see footnote).

It should be noted that until a grant of **Permission** has been issued, the development in question is **NOT AUTHORISED**.

Signed on behalf of Cork City Council



Valerie Kavanagh  
Senior Staff Officer

Date: 31/05/2022

NB: See Notes Overleaf

**Please read the following carefully**

1. The Applicant is advised to carefully read through all conditions and notes attached to this decision. Please note that a number of conditions attached to this planning permission may require the submission of compliance plans and/or particulars for the agreement of the Planning Authority prior to the commencement of development. Failure to comply with a condition of a planning permission is an offence under the Planning and Development Act 2000 (as amended). **Such compliance submissions should be emailed to [planningcompliance@corkcity.ie](mailto:planningcompliance@corkcity.ie)**
2. An appeal against a decision of a planning authority made under section 34 of the Planning and Development Act 2000 (as amended) may be made to An Bord Pleanála within 4 weeks beginning on the date of decision (note: not the date on which the decision is sent or received. This is a statutory time limit and An Bord Pleanála has no discretion to accept late appeals). See enclosed notes. Appeals must be fully complete in all respects, including the **appropriate fee**, when lodged. It is not permissible to submit any part of an appeal at a later date, even within the time limit. For details of the appeals procedure including details of the correct fee, contact An Bord Pleanála. An Bord Pleanála, 64 Marlborough Street, Dublin 1. [www.pleanala.ie](http://www.pleanala.ie).
3. A grant of planning permission under the Planning and Development Act 2000 (as amended) is not to be taken as a waiver of the responsibility of the Applicant and/or developer to comply with the provisions of any Act, Order, Regulation or any other statutory provision (e.g. the Building Regulations, Waste Management Acts, etc).
4. A grant of planning permission under the Planning and Development Act 2000 (as amended) does not exempt the Applicant from any requirements which the Fire Authority (pursuant to the Fire Services Act, Building Control Act and Building Control Regulations) may require to be implemented. The Applicant is therefore advised to contact the Cork City Fire Department to discuss these matters prior to the submission of the Commencement Notice (as required under the Building Control Regulations) and/or the making of an application for a Fire Safety Certificate (pursuant to the Building Control Regulations, if applicable).
5. Please note that a grant of planning permission does not imply that the submitted drawings are in compliance with the Building Regulations. Compliance with the Building Regulations is a matter for the Applicant and their technical advisors.
6. Any requirements under the above two items may require physical or other changes to the development that may require a grant of permission under the Planning and Development Act 2000 (as amended). The Applicant is advised to contact the Planning Authority to clarify any issues that may arise.
7. Please note that a grant of planning permission does not entitle the Applicant / developer to undertake works which would involve excavation or damage to the public road, or to erect a hoarding, scaffolding or temporary fencing on the public footway/roadway. The specific consent by way of licence from Cork City Council (Roads Protection and Asset Management Division) will be required for any such works, subject to compliance with the licence conditions as based on the "Directions for the Management and Control of Roadworks in Cork City". In the event of accidental damage to the public footway/roadway the Applicant / developer shall be responsible for its immediate temporary reinstatement. Cork City Council at all times reserves its right to undertake the said works, at the Applicant's / developer's expense, in the event of failure or unsatisfactory execution of the works. The cost of same shall be calculated in accordance with the Roads and Transportation Directorate schedule of reinstatement charges prevailing at the date of the works by Cork City Council.
8. Please note that the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended) which states that a person shall not be entitled solely by reason of a grant of planning permission to carry out any development. Compliance with other regulations and legal requirements may also be necessary.
9. Please note that no part of the proposed development should encroach onto or oversail adjoining public or private land. In the event of encroachment or oversailing of adjoining property, the consent of the adjoining property owner is required.
10. The Planning Authority, in deciding this planning application, has had regard to any submissions or observations received in accordance with the Planning and Development Regulations 2001 (as amended).
11. In accordance with Article 20 of the Planning and Development Regulations 2001 (as amended) you are hereby required to remove forthwith any site notice erected in respect of this planning application.



**Planning Ref. No.: 21/40518**

**First Schedule**

**Having regard to the nature, location and context of the site and surrounding area, the policies and objectives of the Cork City Development Plan 2015-2021 and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out in the Second Schedule, the proposed development would not seriously injure the residential or visual amenities of the area, and is in accordance with the proper planning and sustainable development of the area.**

**Schedule of Conditions attached to  
Planning Permission issued by Cork  
City Council – Ref.: 21/40518**

**Second Schedule**

<b>No.</b>	<b>Condition</b>	<b>Reason</b>
1	The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 23/09/2021, as amended by the Further Information plans and particulars submitted to the planning authority on 20/12/2021, and the Clarification of Further Information plans and particulars submitted to the Planning Authority on 04/05/2022, except where otherwise altered or amended by conditions contained in this Schedule.	To define the scope of the permission, and to enable the planning authority to check the proposed development when completed, in the interests of proper planning and sustainable development.
2	<p>a) The total net retail sales space of the forecourt shop inclusive of any retail, delicatessen area, seating area and off-licence shall not exceed 100 square metres. Revised plans with the necessary alterations shown thereon shall be submitted to the Planning Authority for written agreement prior to commencement of development.</p> <p>b) Use of the overall premises shall be restricted to the revised plans as required and to be agreed under condition 2a) and any change of use, whether within the same use class for exempted development of the Planning and Development Regulations 2001 as amended, or otherwise, shall be subject to the prior permission of the Planning Authority.</p> <p>c) The café/deli/food offer counter and food prep area shall be ancillary to the retail use of the service station and shall not operate independently from same.</p>	To comply with national policy, as set down in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in January 2005 and Cork City Development Plan 2015.
3	The hours of operation shall be as per the details submitted on the 20.12.2022.	In the interest of the residential amenities of property in the vicinity.
4	All proposed vehicular and pedestrian access points shall be designed in accordance with the	In the interest of traffic safety.

	Design Manual for Urban Roads and Streets (DMURS). Exact details shall be agreed with the Planning Authority prior to commencement of development. All costs associated with this condition to be borne by the Applicant.	
5	A Construction Traffic Management Plan for the proposed development including dedicated haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network shall be agreed with Cork City Council in consultation with An Garda Síochána before works commences on site.	In the interest of traffic safety.
6	The provision of Charge Points in the parking area shall cater for up to 10% of spaces being allocated for Electric Vehicles and shall be designed by the developer whereby all costs associated shall be at the developers expense.	To cater for more sustainable energy use in line with national policies for the deployment of EVs.
7	Surface water disposal shall be restricted to the existing run-off rates from the site.	In the interest of public health.
8	(a) The developer shall adhere to legislative requirements contained in the S.I. No. 630/2019 - Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 and where appropriate other legislation following industry best practice. This includes, but is not limited to: Energy Institute Design, construction, modification, maintenance and decommissioning of filling stations (known as the Blue Book); The Institution of Engineering and Technology, Electric Vehicle Charging Installations at Filling Stations.	In the interest of Health & Safety and Environmental Protection.
9	(e) Prior to commencement of the development the Developer shall submit to the planning authority for agreement, full details of the waste management proposed for the development. Details shall include proposals on waste reduction, reuse, and segregation, recycling, and vented storage as well as who will manage the waste, dispose of it and present it for collection. The developer should refer to the British standards BS 5906: 2005 in relation to waste management in buildings to ascertain capacity required for development.	In the interest of orderly management and disposal of waste.
10	(a) Upon commissioning of the structure, noise from activities	In the interest of residential amenity.

	<p>associated with this development shall not give rise to noise levels off site exceeding 55dB(A) Leq, 15 minutes during the hours of 0800-2200 and 45dB(A) Leq, 15 minutes during the hours of 2200-0800. There shall be no audible tonal or impulsive noise. The developer shall engage the services of a noise specialist to assess compliance with this condition as required.</p> <p>(b) Prior to the commencement of the development, the developer shall identify all potentially significant noise sources at the proposed development site, and their expected noise output quantified by (a) reference to LWA levels or LAeq T levels (at a specified distance) provided by the manufacturer/supplier, (b) reference to typical levels set out in the relevant British Standards BS 4142:2014+A1:2019, or (c) direct measurement of the equipment onsite or at a similar facility. Items that need to be considered are extract fans, air-conditioning, and plant room. (This is a non-exhaustive list.)</p>	
11	<p>(a) Construction waste such as wood, metal, and concrete, shall be segregated and submitted for recycling. Waste Gypsum shall be segregated and delivered to an appropriate facility. Hazardous construction waste such as paint, lubricants, oil, lighting, wood preservative shall be segregated and disposed of at an authorised facility.</p> <p>(b) The developer shall ensure that any waste moved off site during site clearance operations or construction works is removed by authorised waste contractors only. The material shall be taken only to sites authorised by a local authority or the Environmental Protection Agency.</p> <p>(c) All asbestos arising from the demolition section of this development shall be disposed of in accordance with the procedures of Health and Safety Authority "Guidelines on Working with Materials Containing Asbestos Cement".</p>	In the interest of orderly management and disposal of waste.
12	<p>a) Noise during site clearance and construction shall not exceed 65 dB (A), Leq 30minutes and the peak</p>	In the interests of residential amenity.

	<p>noise shall not exceed 75 dB (A), when measured at any point off site.</p> <p>(b) Working hours during site clearance and construction shall be restricted to 0800-1800 hours on Mondays to Fridays and to 0800-1600 hours on Saturdays. Activities outside these hours shall require the prior approval of the Planning Authority.</p>	
13	<p>(a) The Developer shall ensure that no appreciable negative environmental impacts occur because of the construction works associated with this development. The developer shall give particular attention to dust, noise, odour, litter, dirt on public roads, surface water runoff and spillage of fuel oils. Operations liable to produce dust shall be screened and dust suppression devices used where appropriate. Fuel oils and other chemicals shall be adequately banded, with bunds having volumes of at least 110% of the volumes of fuel stored.</p> <p>(b) The developer shall take measures to ensure that construction works do not give rise to dirt or litter on the public road, and shall be responsible for the immediate removal from the public road of any dirt or litter caused by the construction works.</p>	In the interests of orderly management and disposal of waste.
14	<p>(a) Tree felling and clearing of vegetation shall take place outside of the bird nesting season.</p> <p>(b) The Developer shall ensure that surface water from the development is free from herbicides, pesticides, fertilisers and any other substances which could have a harmful affect on the environment.</p> <p>(c) The developer shall ensure that any excavated material stockpiled on site during construction shall be held in a manner such as to ensure that no silt or run-off from these stockpiles enters any watercourse.</p>	In the interest of preservation of wildlife
15	<p>Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the following classes of public infrastructure and facilities benefiting</p>	To comply with the General Development Contribution Scheme 2020-2022, which was adopted by Cork City Council on 14th September, 2020, and in the interests of the proper planning and sustainable development of the area.

development in the City of Cork and that is provided or that is intended to be provided by or on behalf of Cork City Council, in accordance with the General Development Contributions Scheme ("the GDSC scheme"):

Class 1 - Roads, Transportation Infrastructure and Facilities

Class 2 - Water and Drainage Infrastructure and Facilities

excluding Water and Wastewater

Class 3 - Parks, Recreation, Amenity and Community Facilities

The present value of the contribution as determined under the GDSC made by Cork City Council on the 14th September, 2020 is €4157.95, which sum is subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such exemptions or reductions as apply to the proposed development having regard to the provisions of Tables 5 and 6 of the GDC Scheme.

# Cork City Council

15 SEP 2022

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

Community, Culture  
and Placemaking

Community, Culture & Placemaking Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.

Post/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924762  
Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

## SECTION 5 DECLARATION APPLICATION FORM

under Section 5 of the Planning & Development Acts 2000 (as amended)

### 1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Lee Garage, Model Farm Road, Cork, T12 T326

### 2. QUESTION/ DECLARATION DETAILS

**PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:**

*Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

*Note: only works listed and described under this section will be assessed under the section 5 declaration.*

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

See attached cover letter and drawings

3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

N/A

4. Is this a Protected Structure or within the curtilage of a Protected Structure?  N/A

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?  N/A

5. Was there previous relevant planning application/s on this site?

If so please supply details:

Reg. Ref.: 09/33660, Reg. Ref.: 10/34500, Reg. Ref.: 21/40518 – see attached cover letter for details.

### 6. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	502 sq.m
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas... (sq.m) N/A
(c) If concerning a change of use of land and / or building(s), please state the following:	
<u>Existing</u> previous use (please circle) The sale or leasing or display for sale or leasing of motor vehicles.	<u>Proposed</u> existing use (please circle) Shop

### 8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

9. I / We confirm that the information contained in the application is true and accurate:

Signature: John Spain Associates John Spain Associates (Agent),  
39 Fitzwilliam Place, Dublin 2, D02ND61  
Date: 15/09/2022



- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

*The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.*

**DATA PROTECTION:** The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.

Development Management Section,  
Community, Culture & Placemaking Directorate,  
Cork City Council,  
City Hall,  
Anglesea Street,  
Cork



15<sup>th</sup> September 2022  
JSA Ref.: YMCM 22022

Dear Sir/Madam,

**RE: APPLICATION FOR A SECTION 5 DECLARATION IN RELATION TO THE PROPOSED CHANGE OF USE FROM AN EXISTING CAR SALES SHOWROOM TO SHOP AT LEE GARAGE, MODEL FARM ROAD, CORK.**

## 1.0 INTRODUCTION

1.1 On behalf of our client, Lee Garage Cork Ltd. Trading as Lee Auto Centre, Lee Garage, Model Farm Road, Cork, T12 T326, we wish to make an application for a Section 5 Declaration from Cork City Council, in relation to the proposed change of use from an existing car sales showroom to shop at Lee Garage, Model Farm Road, Cork. It is considered that the proposed change of use is exempted development in accordance with the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001-2022.

1.2 This Section 5 application requests a declaration from the Planning Authority on the following:

*'Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road, Cork is or is not development or is or is not exempted development.'*

1.3 We enclose the following information with this Section 5 application:

- Statutory fee of €80;
- Completed Section 5 Declaration Application Form; and
- 2 copies of application drawings including Site Location Map, Existing and Proposed Site Layout Plans, Existing and Proposed Floor Plans, and Existing and Proposed Elevations (no changes proposed) prepared by DL Group Consulting Engineers.

1.4 In preparing this application we have had regard to;

- (a) Section 4 (3) of the Planning and Development Act 2000, as amended;

Managing Director: John P. Spain BBS MRUP MRICS ASCS MRTPI MIPI  
Executive Directors: Paul Turley BA MRUP Dip Environmental & Planning Law MIPI Rory Kunz BA (MOD) MScERM MAT&CP Dip ELA Mgmt. MIPI  
Stephen Blair BA (Mod) MRUP MIPI MRTPI Blaine Cregan B Eng BSc MSc

Senior Associate Directors: Luke Wymer BA MRUP Dip Plg & Env Law Dip PM Prof Cert Env Mgmt MIPI  
Meadhbh Nolan BA MRUP MRTPI Kate Kerrigan BA MSc MRTPI

Associate Director: Ian Livingstone MA (Hons) Town & Regional Planning, MSc. Spatial Regeneration. MRTPI

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.  
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

- (b) Class 14 of Schedule 2, Part 1- Exempted Development -General of the Planning and Development Regulations 2001 - 2022.
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001 - 2022.

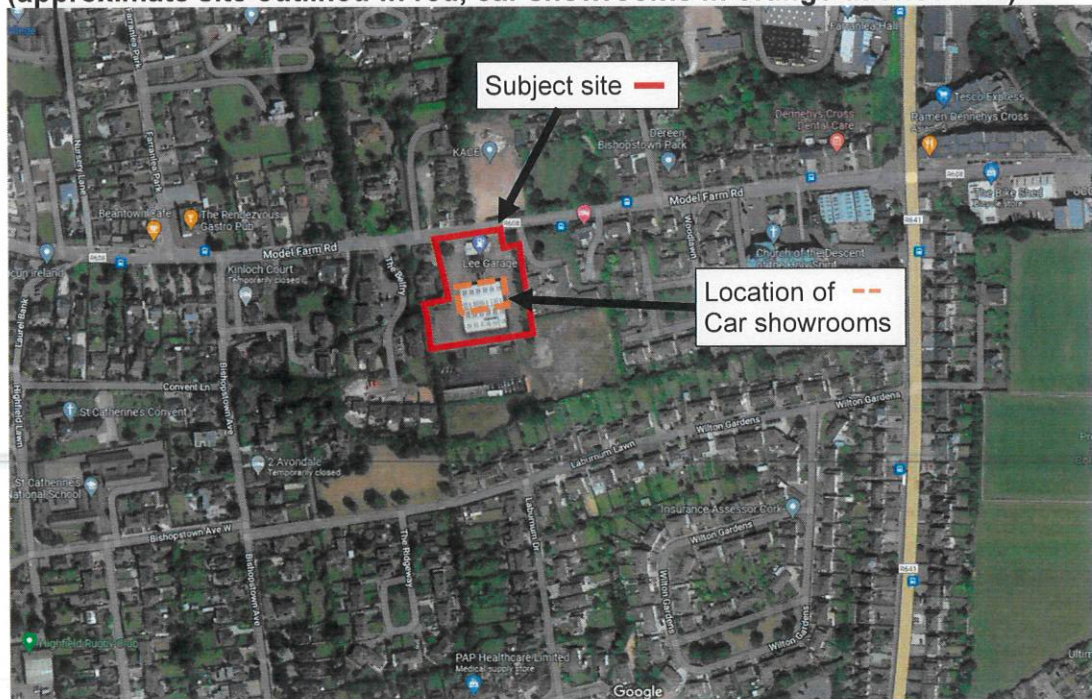
**Background**

1.5 The subject property has an established use as a car sales showroom, which has been the planning use of the premises for c. 40 years. The property is currently occupied by Lee Auto Centre.

**2.0 SITE LOCATION AND DESCRIPTION**

2.1 The subject unit is located at Lee Garage, Model Farm Road, Cork, to the west of the city centre in Bishopstown, on the southern side of Model Farm Road as shown in Figure 2.1 below. The Lee Garage site has an area of c.0.64 ha. and comprises a motor sales and petrol station premises, with a car sales showroom and service garage to rear, a forecourt, shop and associated curtilage for parking, display and storage of motor vehicles. The site is serviced by two entrances on the Model Farm Road, between which there is a raised section currently used for the display of cars for sale.

**Figure 2.1: Satellite Image of the subject site and car sales showrooms (approximate site outlined in red, car showrooms in orange dashed line)**



Source: Google maps

- 2.2 The subject application relates to the car sales showroom unit which is a single storey premises (502 sq.m), located to rear of the forecourt canopy structure, as illustrated in Figures 2.2 – 2.3 below. The subject application does not include the service garage located behind the car sales area.
- 2.3 The subject property is currently operating as Lee Auto Centre, a car sales showroom. The premises has a long established use for the sale and display of motor vehicles, with Lee Auto Centre having been established on the subject site c.40 years ago.



**Figure 2.2: Photo of Lee Auto Centre car sale showrooms (east of forecourt)**



Source: DL Group

**Figure 2.3: Photo of Lee Auto Centre car sale showrooms (west of forecourt)**



Source: DL Group

**Figure 2.4: Existing entrances to Lee Auto Centre car sales showrooms from Model Farm Road (view east)**



Source: DL Group

**Figure 2.5: Existing eastern entrance to Lee Auto Centre car sales showrooms from Model Farm Road (view west)**



Source: DL Group

### **3.0 PLANNING HISTORY**

- 3.1 A review of the planning history of the subject site was undertaken using the online Cork City Council planning portal. The following planning permissions are of most relevance to the property.

*Reg. Ref.: 82/11109/82 – Erection of Storage Tanks*

- 3.2 A final grant of permission was issued by Cork Corporation on the 25<sup>th</sup> of March 1983 for development described as “*The Installation of L.P.C. Storage Tanks and automatic dispenser at Lee Garage Model Farm Road, Cork.*”.



- 3.3 The permission was subject to 2 no. conditions. The conditions required the protection of the private drains to guard against pollution of water in the event of storage tank failure and compliance with the requirements of the Fire Officer.

Reg. Ref.: 09/33660 – Canopy extension, new fuel pumps and widening of existing entrance

- 3.4 A final grant of planning permission was issued by Cork City Council on the 8<sup>th</sup> of March 2009 for development described as *“The construction of a) extension to existing canopy, b) addition of 2 new fuel dispensing pumps, c) installation of 2 additional under-ground fuel storage tanks, d) widening of existing entrance”* at Model Farm Road, Cork. The permission was subject to 8 no. conditions.

- 3.5 This permission provided for a larger forecourt canopy, additional forecourt pumps and alteration to the permitted easternmost entrance. The conditions relate to, *inter alia*, the reinstatement of footpaths, water and drainage and construction matters, financial contributions. None of the conditions attached to this permission relate to the car showrooms premises or use. Under Access, Parking and Traffic, the Planner’s Report notes no objection to the development.

Reg. Ref.: 10/34500 – Retention of alterations to permitted canopy

A final grant of planning permission was issued by Cork City Council on the 2<sup>nd</sup> September 2010 for development described as *“retention of alterations to extended forecourt canopy as granted under 09/36650”* at Lee Garage, Model Farm Road, Cork. The permission was subject to 2 no. conditions.

- 3.6 This permission provided for a slight reduction in the width of the permitted canopy, necessitated by the limitations of the existing forecourt canopy structure. The conditions require the development to be carried out in accordance with the drawings submitted and that the development be carried out in accordance with the conditions of Planning Reg. Ref.: 09/3360. The Planner’s Report on this application states that the Roads Department had no objection to the development.

Reg. Ref.: 21/40518 – Change of Use of car showrooms and construction of forecourt convenience-shop

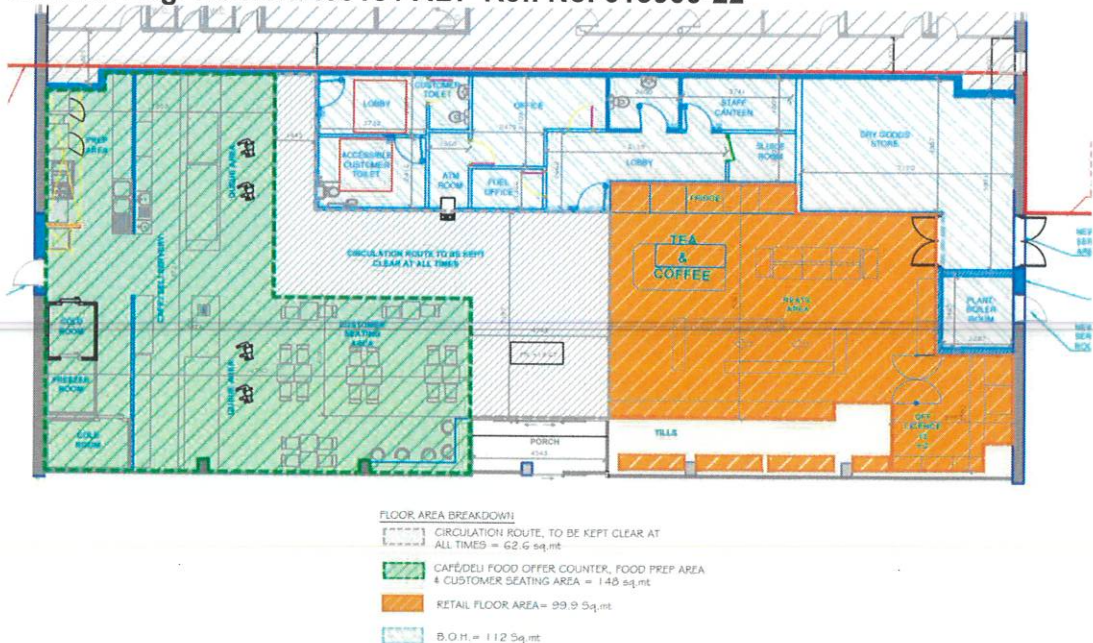
- 3.7 A notification of decision to grant permission was issued by Cork City Council on the 31<sup>st</sup> of May 2022 for development described as *“(1) Demolition of existing amenity shop forming part of existing filling station; (2) Change of use of part of existing car show room to new forecourt convenience shop ancillary to existing filling station, with internal alterations to provide the following areas: ancillary retail area (99.8m<sup>2</sup>) including off-licence use ancillary to the primary retail use, ancillary cafe deli food offer counter and food prep area, customer seating area, staff amenities, public amenities, manager office, ATM, fuel sale counter, food store and plant room; (3) Construction of proposed extension to front of existing building to accommodate new customer seating area; (4) Minor alterations to existing elevations; (5) New parking layout to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; (6) Construction of stand-alone bin storage outbuilding and stand-alone MV substation building; (7) Proposed alterations to existing forecourt canopy; (8) All associated site works.”* at Lee Garage, Model Farm Road, Cork.

- 3.8 The decision to grant permission was subject to 15 no. conditions. The roads department had no objection to the development subject to implementation of

revisions to the site layout plan submitted as part of the Further Information response.

- 3.9 This permission provided for the removal of the existing filling station forecourt amenity shop and change of use of part of existing car showroom to new forecourt convenience shop with retail area with ancillary off-licence use, delicatessen area, seating area, minor alterations to existing elevations; revised parking arrangements to include provision of E-car parking spaces, motorcycle parking spaces and bicycles parking area; bin storage outbuilding and substation building, and alteration of existing forecourt canopy. Condition No. 2(a) limits the total net retail sales space of the forecourt shop inclusive of any retail, delicatessen area, seating area and off-licence to 100 square metres. The planner's report on the application notes the site as comprising "an existing petrol filling station with associated ancillary services (car wash etc.) and a car sales showroom and service garage".
- 3.10 The decision is subject to a first party appeal to An Bord Pleanala, ABP-313906-22 refers. The appeal is due to be decided by 27<sup>th</sup> of October 2022. The appeal requests that Condition No. 2(a) be revised to provide for a forecourt shop of 100 sq.m to include the retail and ancillary off-licence, and an additional separate delicatessen and seating area. A revised proposed floorplan which provides for 99.9 sq. m. of retail unit (including ancillary off-licence use) and a separate 148 sq.m for café/deli unit including ancillary customer seating area was submitted with the appeal to demonstrate that the revised condition could be discharged. For information purposes, a copy of the floorplan is included at Figure 3.1 below.

**Figure 3.1: Floor plan submitted with first party appeal in respect of Cork City Council Reg. Ref.: 21/40518 / ABP Ref. No. 313906-22**



Source: DL Group Consulting Engineers

- 3.11 This Section 5 application relates to the area in use as car sales showroom only which the applicant intends to operate entirely as a shop as shown on the attached floorplans prepared by DL Group. The subject area comprises a car sales showroom and has been / is used for the display and sale of motor vehicles. This car sales showroom use has been in operation in the subject property for in excess of 40 years and therefore is the long established use of the single storey premises.

#### 4.0 EXEMPTED DEVELOPMENT

4.1 This Section 5 application seeks confirmation from Cork City Council that the change of use of the subject premises from car sales showroom to shop is exempted development. It is submitted that the proposed change of use constitutes exempted development as defined under Class 14 of the Planning and Development Regulations 2001 – 2022 and Section 4(3) of the Planning and Development Act 2000, as amended.

4.2 Class 14 of Schedule 2, Part 1 - Exempted Development – General, of the Planning and Development Regulations 2001 - 2022, outlines that certain changes of use are exempted development and therefore do not require planning permission. This includes sub class 14 (a) which states:

*“Class 14: Development consisting of change of use-*

*(a) from use for sale of hot food for consumption off the premises, or **for sale or leasing or display for sale or leasing of motor vehicles, to use as a shop**”  
(Emphasis Added)*

4.3 The existing Unit has permission / an established use as a car sales showroom and has been used for the sale of motor vehicles for a period in excess of 40 years. It is therefore considered that the proposed change of use from the existing car sales showroom use to a shop, constitutes exempted development under Class 14 (a) and does not require planning permission.

4.4 Section 4 of the Act refers to 'Exempted Development' and sets out categories of development that shall be exempted development for the purposes of the Planning and Development Act 2000, as amended. No works are proposed at present.

4.5 We are aware that Article 9 of the Planning and Development Regulations 2001-2022 specifies a number of restrictions which have the effect of removing the exemption which applies to developments to which Article 6 relates.

4.6 Article 6(1) states that subject to article 7, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1. The change of use from the car sales showroom to use as a shop, is exempt under Class 14(a) in Column 1 of Part 1 of Schedule 2. There are no conditions or limitations specified in column 2 of said Part 1 opposite Class 14(b) which restrict the proposed change of use. It should be noted that Article 7 is not applicable to this development.

4.7 Article 9 of the Planning and Development Regulations 2001 – 2022 states that, development to which Article 6 of the Regulations relates shall not be exempted development if it falls within any of the categories outlined in Article 9. Such categories include the following:

- If the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a condition under the Act;
- Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width;



- Endanger public safety by reason of traffic hazard or obstruction of road users.
- 4.8 It is respectfully submitted that the proposed change of use and associated works is not subject to the provisions of Article 9(1)(a)(i) to (xii). The proposed change of use to “shop” does not contravene any condition attached to a planning permission for a “shop”. The proposed change of use of the subject premises from car sales showroom to shop will not give rise to any issues in respect of traffic safety when compared with the long established use. The premises has a long established commercial use and there is sufficient provision of car parking on the site which has served and will continue to serve this commercial premises. As shown on the attached Site Layout Plan drawings prepared by DL Group, the established parking areas for the car sales showroom, extends to a linear length of over 66m which accommodates 26 no. car parking spaces. Additional car parking for the car services unit is provided to the rear of the site.
- 4.9 In respect of application Reg. Ref.: 21/40518 which provided for a change of use to retail unit at the subject premises, the City Council's Transportation Department Traffic: Regulation & Safety Report of the 2<sup>nd</sup> of November 2021 clearly states that there is no objection to a grant of permission subject to conditions. It is noted that no grant of permission has issued in respect of this application as it is currently the subject of an appeal to An Bord Pleanála.
- 4.10 Article 10, Changes of Use, which relates to restrictions on exemptions for change of use within any one of the classes of use specified in Part 4 of Schedule 2, does not apply to this development as the exemption the applicant is availing of is under Part 1 of Schedule 2 as set out above.
- 4.11 It is respectfully submitted that the proposed change of use of the subject property from car sales showroom to shop will not give rise to any of the categories set out at Article 9 above. Therefore, the proposed change of use is exempted development.

#### **Relevant Precedent**

- 4.12 The following is a relevant precedent from An Bord Pleanála for change of use from car sales showroom to shop.

#### *An Bord Pleanála Ref. No.: 304204-19*

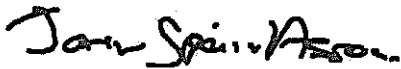
- 4.13 A question arose as to whether the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan, is or is not development or is or is not exempted development.
- 4.14 On the 24<sup>th</sup> of October 2019, An Bord Pleanála concluded that –
- (a) the proposed change of use pertaining to the former car sales premises would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended, and
  - (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations, 2001, as amended.

- 4.15 On the 24<sup>th</sup> of October 2019, An Bord Pleanála issued the Order determining that the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan is development and is exempted development.
- 4.16 It is apparent from the above decision that the Board considered that an exemption under Class 14 (a), i.e. change of use from car showroom to shop, applied in this instance.

**5.0 SUMMARY AND CONCLUSIONS**

- 5.1 The extent of development for which a Section 5 declaration is sought has been outlined. It is submitted that the proposed change of use from Car Sales Showroom to Shop constitutes exempted development under Class 14 of the Planning and Development Regulations 2001 – 2022 and Section 4(3) of the Planning and Development Act 2000, as amended.
- 5.2 We would be grateful if Cork City Council could issue a declaration under Section 5 of the Planning and Development Act 2000, as amended, on whether the proposed development constitutes exempted development.
- 5.3 Please do not hesitate to contact us should you require any clarification of the documentation enclosed.

Yours faithfully,



**John Spain Associates**